B-222048

The Honorable Dennis P. McAuliffe
Administrator, Panama Canal Commission
APO Miami 34011

February 10, 1987

Dear Mr. McAuliffe:

DIGESTS

1. Certifying officer erroneously charged and paid obligation from an improper account and the error was not detected until all funds in proper account had been spent. While error was negligent, relief may be granted to certifying official under alternate ground of 31 U.S.C. Sec. 3528(b)(B), since the obligation was incurred in good faith, the Government received value for the payment, and, at the time the obligation arose and was paid, there was no law specifically prohibiting the payment.

2. Where funds to pay prior obligation for reception and representation expenses were not charged to the proper account and reserved for payment, and subsequent obligations exceeded a congressional limit for such expenses, the agency has violated the Antideficiency Act, 31 U.S.C. Sec. 1341(a), and should take actions necessary to report the violation to the President and the Congress under 31 U.S.C. Sec. 1351.

This responds to a letter written to our Office by Anel E. Beliz, Director of Public Affairs, Panama Canal Commission (Commission). Mr. Beliz asked that we relieve him and Mrs. Flor D. de Aguilar of liability for their improper certification of $1,867 in connection with a cocktail party sponsored by the Commission. Mrs. de Aguilar, Administrative Officer for the Office of Public Affairs, also acts as certifying officer for that office. As discussed below, we are granting the relief requested for Mrs. de Aguilar. Mr. Beliz is not a certifying officer and therefore no relief for him is necessary.

In March 1985, the Commission held a cocktail party for shipping officials and members of the press. Invoices for this party totaled $1,867. Although our Office was not provided copies of the certifications, apparently Mrs. de Aguilar certified payment vouchers which erroneously charged the expenses to the Office of Public Affairs' operating account. (Mr. Beliz also co-signed the voucher in question.) The costs should have been charged to the Administrator's reception and representation account.

Mr. Beliz states that the error was not detected until the end of the fiscal year. At that time, all the funds in the reception and representation account had been obligated. Further, the appropriation funding this account expressly limited funds available for this purpose. See Pub.L. No. 98-473, 98 Stat. 1837, 1960 (1984). Based on these circumstances, the Commission has held Mr. Beliz and Mrs. de Aguilar personally liable for the expenditure. For the following reasons, we are granting relief.

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Under 31 U.S.C. Sec. 3528(a), a certifying officer is responsible for repaying a payment that is illegal, improper, or incorrect because of an inaccurate or misleading certificate.

The Comptroller General is authorized to relieve a certifying officer of liability under the provisions of 31 U.S.C. Sec. 3528(b) if he decides that--

"(A) The certification was based on official records and the official did not know, and by reasonable diligence and inquiry could not have discovered the correct information; or

(B)(i) the obligation was incurred in good faith;

(ii) no law specifically prohibited the payment; and

(iii) the United States Government received value for the payment."

We have little doubt that the certifying officer did not meet the relief criterion in paragraph A. She and her supervisor can fairly be charged with knowledge of which types of expenses could properly be charged to the Office of Public Affairs' operating account. Although the billing document may well have contained some legitimate expense items for which her office was responsible, as Mr. Beliz suggests, as well as the cocktail party charges, it appears to us that with "reasonable diligence and inquiry," she could have identified which items were which.

Note that her error was not affected by the fact that the Commission's representation and reception account was depleted. Her certification would still have been improper even if the representation account was solvent because operating funds were not available for the kind of activity for which she paid. We mention this to assure both Public Affairs officials that by statute neither of them are responsible for the Antideficiency Act violation that resulted from the overpayment for the party. (See later discussion.)

Fortunately, the relief criteria for certifying officers are written in the alternative. The certifying officer must meet Criterion A or B. It appears to us that all three elements of Criterion (B)--good faith, no law prohibiting the expenditure, and the receipt of value by the Government--are present and, accordingly, relief is proper under this authority.

The Commission does not dispute that the first and third elements--good faith and receipt of value by the Government--were present here. However, existence of the second element--no law prohibiting the expenditure--requires more discussion in light of the congressional limit on this account included in the appropriating legislation.

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The record indicates that, after approval by appropriate authorities, arrangements for the cocktail party were made by telex messages in March 1985. Our Office has taken the position that an obligation of funds is not dependent upon the clerical act of recording that obligation. See 55 Comp.Gen. 812, 824 (1976). Rather, we have stated that an obligation arises at the point when the Government enters into a definite commitment which creates a legal liability of the Government for the payment of appropriated funds for goods ordered or received. See B-192282, Apr. 18, 1979. Accordingly, we conclude that an obligation arose at the time the Commission entered into a legally binding agreement for the goods and services necessary for the cocktail party.

We believe that the criteria for relief should be measured against the transaction at the time the obligation arose and payment was made--not at the later date when the error was detected. Since funds were available for this expenditure at the time the obligation arose, i.e., when the transaction occurred, and there were sufficient funds in the Commission's account to pay for the party, had the voucher been presented for payment at that time, payment was not prohibited by law. Therefore, notwithstanding the fact that the actual certification was incorrect, because payment was made from the wrong account, we believe the criteria for granting relief set forth in 31 U.S.C. Sec. 3528(b)(2) has been met. Accordingly, Mrs. de Aguilar is relieved of personal liability for her improper certification.

Based on the facts presented, we think the Commission has another serious problem. A payment was made for a party from an account which had no funds available for that type of expense. The proper account was never charged with the expense and as a result, no funds were reserved to make the payment when it fell due. It seems clear that the Antideficiency Act, 31 U.S.C. Sec. 1341(a)(1)(A), was violated, and that the violation is attributable to the highest ranking officer or employee in the Administrator's office who was in a position to authorize the obligation and payment for the party. Since current funds are not available to make an accounting adjustment which would replenish the Office of Public Affairs' account, the Antideficiency Act violation should be reported to the President and the Congress in accordance with 31 U.S.C. Sec. 1351.

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Sincerely yours,

(Mrs.) Rollee H. Efros

Associate General Counsel